from signal quality.[253] APTS contends that the Commission has the authority to prohibit stripping of ghost-cancelling signals from NCE stations and is concerned that any discretion granted cable operators to strip line 19 information may undermine the intent of the adoption of a universal ghost-cancelling system.[254]

80. As described above, cable operators are faced with three broad categories of the content of broadcast signals they must carry when fulfilling their must-carry obligations. First, cable operators are mandated to carry the primary video, accompanying audio and line 21 closed caption transmissions of both qualified local commercial and NCE stations. Second, cable operators are required, where technically feasible, to carry program-related material on the vertical blanking interval or subcarriers of qualified local commercial stations. Third, with respect to local qualified NCE stations, cable operators, where technically feasible, must carry program-related material that may be necessary for the receipt of programming by handicapped persons or for educational or language purposes. Lastly, the 1992 Act gives cable operators discretion to carry any other information in a station's VBI or subcarriers.

81. Two variables must be addressed for the above obligations to be put into practice: a) program-related material and b) technical feasibility. As suggested by Cap Cities' comments, we believe the best guidance for what constitutes program-related material is to be found in the factors enumerated in WGN Continental Broadcasting. Carriage of information on a stations's VBI is rapidly evolving; thus, we believe no hard and fast definition can now be developed. However, relying on the copyright approach followed in the WGN Continental Broadcasting case will provide guidance in this area. For example, we reject Nielsen's proposal that program identification codes carried on line 22 of a broadcast station's VBI be required to be carried. Program identification codes are not program-related since their presence is used to determine viewership levels. With respect to ghost-cancelling technology carried in a station's VBI, the 1992 Act permits a cable operator, where appropriate and technically feasible, to remove ghost-cancelling information carried in a station's VBI if the cable operator employs such technology at the cable system's headend.[255] Thus, ghost-cancelling technology can only be stripped from the television signal if the cable operator applies an adequate alternative methodology at the headend.

82. With regard to the "technical feasibility" of the carriage of program-related material in the VBI or on subcarriers, we generally concur with Time Warner's suggestion that such carriage should be considered "technically feasible" if it does not require the cable operator to incur additional expenses and to change or add equipment in order to carry such

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253 TKR Comments at 9.

254 APTS Comments at 30-31.

255 While the 1992 Act is silent about the treatment of enhancements carried on the VBI of local qualified educational stations, we believe that there is no reason why these stations should be treated differently.

material. However, we would consider signal carriage to be "technically feasible" if only nominal costs, additions or changes of equipment are necessary. We believe this approach satisfies the intent of Congress. Finally, we find that the type and method of signal enhancements that may be used over and above normal processing on a cable system is best left to the cable operator.

2. Channel Positioning

83. Section 614(b)(6) provides that the signals of local commercial television stations carried pursuant to the new must-carry rules must be carried on either (1) the same channel on which the station is broadcast over the air, (2) the cable channel on which it was carried on July 19, 1985, or (3) the cable channel on which it was carried on January 1, 1992. The election of which of these three alternatives to choose is left up to the station involved. Similarly, Section 615(g)(5) requires that NCE signals carried pursuant to must-carry requirements must appear on the cable system channel number on which the qualified local NCE station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station. In either case, another channel number that is mutually agreed upon by the station and the cable operator may be selected. In the Notice, we recognized that, under these provisions, more than one station may seek and have a valid claim to the same cable channel. Thus, we sought comment on whether a formal priority system should be established for handling conflicts among stations and whether, in this situation, a cable operator should be permitted to make a selection within the constraints otherwise established in order to minimize disruption to consumers.[256] We also asked commenters to consider the obligation of cable operators to provide "on-channel" carriage for stations whose channel number is not encompassed, from a technical perspective, by the basic service tier.[257]

84. Commenters dispute whether the right to select a must-carry signal's channel position is at the discretion of the broadcaster or the cable operator. Broadcast interests assert that a plain reading of the statute gives stations the right to elect their channel position from among the specified choices.[258] Cable operators argue that the placement of a must-carry signal is at their discretion as long as they choose one of the options enumerated in the 1992 Act.[259] They claim that this interpretation will minimize disruption to established viewing patterns, enable operators to set out logical signal

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256 Disputes that cannot be resolved by the affected parties are to be resolved by the Commission.

257 For example, should a cable system with a basic tier encompassing channels 2 through 12 be required to provide on-channel carriage to a local station broadcasting on channel 50?

258 NAB Comments at 27; APTS Reply at 16; Curators of the University of Missouri Reply at 7-8.

259 NCTA Comments at 22; TCI Comments at 22; Acton Reply at 11.

carriage line-ups and lead to the most expeditious resolution of disputes between broadcasters. In addition, Time Warner states that stations should not be able to ask for different channel positions in the different communities of a system serving more than one community and that the position chosen should hold until the next must-carry/retransmission consent election date.[260]

85. Cable interests also question how they should handle existing contracts with cable programmers that may conflict with the carriage or channel positioning claims of must-carry stations. In particular, they are concerned about situations where a broadcaster's request for carriage or a specific channel position conflicts with a valid existing contract between a cable operator and a cable programming service for carriage on the basic tier and for a specific channel position.[261] Several parties suggest that we grandfather these agreements, including Viacom, which notes that the statute grandfathers existing broadcast station/cable system agreements for compensation for carriage.[262] Alternatively, Continental suggests that operators not be held contractually liable for failing to honor those contracts that are nullified by the 1992 Act.[263] Broadcast interests state that the position of cable interests on the contract abrogation issue contravenes the plain language and intent of the 1992 Act.[264]

86. As noted above, the Notice asked whether a formal priority structure should be established for resolving conflicts between stations claiming the right to a particular cable channel position. INTV opposes the adoption of a priority system at this time because the extent of such conflicts is unknown and the 1992 Act provides ample flexibility to allow affected stations to resolve their differences.[265] APTS rejects a formal priority system based on a survey of its members that found no clear cut channel positioning preference.[266] Most commenters supporting an FCC-imposed priority scheme favor one that gives the greatest weight to a station's over-the-air channel

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260 Time Warner Comments at 26-27.

261 Discovery Comments at 6-7; Viacom Comments at 7-21; Continental Comments at 20-21.

262 Viacom Comments at 11; BET Comments at 5-6. Viacom asserts that any preemption of existing programming contracts would be an unlawful retroactive rulemaking, raising "serious constitutional implications." Viacom Comments at 10-16, citing, inter alia, Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988), and General Motors Corp. v. Romein, 112 S.Ct. 1105 (1992).

263 Continental Comments at 20-21; accord APTS Reply at 20.

264 WNYC Reply at 12; NAB Reply at 19; APTS Reply at 19.

265 INTV Comments at 15-16.

266 APTS Comments at 32-33.

position.[267] They assert that this choice minimizes viewer confusion and protects the investment broadcasters have made to publicize their channel position and identification. For commercial stations, several cable commenters favor giving priority to a station's position on January 1, 1992, because it is the most recent, would be less disruptive to consumers and would require the fewest engineering and channel line-up changes.[268] CFA/MAP states that when stations have conflicting claims on a channel position, an NCE station should be given preference.[269]

87. Cable operators argue that in cases where a must-carry signal's over-the-air channel number is higher than the number of channels comprising the system's basic tier, a cable operator should have the discretion to place the signal on a channel within its basic tier.[270] They assert that it is often technically infeasible to have basic tier channels scattered all over the cable channel spectrum, as well confusing and disruptive to subscribers.[271] NAB and other broadcast interests disagree and state that any exemption from the over-the-air channel option creates a loophole that would allow a cable system to defeat a station's election of its off-air channel position and would permit cable operators to discriminate among stations by creating basic tiers that preclude on-channel carriage of some stations.[272] In this regard, INTV asserts that current technology permits a cable system to configure a basic tier to reflect the on-channel carriage of all stations.[273]

88. Contrary to the assertions of some cable commenters, we believe that the Act clearly contemplates that the broadcaster, not the cable operator, is entitled to select which of the channel positioning alternatives will apply in its case. At the same time, the Act allows other channel positions to be chosen as long as both the station and the cable operator agree. As indicated above, cable operators will be required to begin carriage of the complement of commercial must-carry signals on June 2, 1993. We will leave the initial channel positioning to the discretion of the cable operator for an interim period beginning on that date. We encourage cable operators to continue to carry stations on their current channel positions during this interim period and, to the extent possible, to place signals that are added to comply with

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267 See, e.g., Acton Comments at 23; Cap Cities Comments at 20-21; Westinghouse Reply at 4.

268 NCTA Comments at 22; Continental Comments at 17.

269 CFA/MAP Comments at 14.

270 See, e.g., TKR Comments 10; NCTA Comments at 22; TCI Comments at 23.

271 Armstrong Comments at 19; InterMedia Comments at 19; Continental Comments at 18-19.

272 See, e.g., NAB Comments at 28.; NAB Reply at 20; WNYC Comments at 11-12.

273 INTV Comments at 16-17.

these rules on a channel consistent with the available options. This should avoid disruption to systems and subscribers. In this regard, we remind cable operators of their obligation to provide stations and subscribers with 30 days prior notification of changes in channel positions.[274] If a station subsequently elects must-carry when it makes its must-carry/ retransmission consent election, it will be required to specify its choice of channel position at that time. However, cable operators will not be required to fulfill any channel positioning request until October 6, 1993, the effective date of our retransmission consent rules.[275] By requiring cable operators to make the needed channel line-up changes pursuant to the must-carry rules and the retransmission consent requirements at the same time, we believe that disruptions to consumer habits and system line-ups should be minimized. Moreover, we believe that the options for channel positioning incorporated in the Act by Congress are not likely to cause significant disruptions even for the interim period from the initial election to the channel positioning rule's effective date. On-channel carriage is associated with the channel by which a station is identified; the July 1985 date represents historical carriage of a signal; and, in the case of commercial stations, the January 1992 date is likely to be the station's current position. However, we will permit cable operators to deny any request for different channel positions on different segments of a single system.

89. With respect to conflicts between the carriage or channel positioning rights of a must-carry station and prior agreements between cable operators and cable programming services, we find that the provisions of the 1992 Cable Act supersede any such contracts. We note that the Conference Report indicated that in no event would any agreement concerning channel positioning entered into prior to July 1, 1990, or the expiration of such an agreement, relieve a cable operator of any must-carry requirements.[276] While the 1992 Act and its legislative history do not address contracts entered into subsequent to this date, we believe that the statute also supersedes such agreements. The fact that the 1992 Act expressly grandfathers existing contracts only in specific instances[277] demonstrates that there was no intent to generally exempt cable operators' obligations under the must-carry and channel positioning requirements. It is clear that Congress intended to give priority to the carriage of local broadcast signals by cable systems. Thus, to give full effect to this policy, Congress created a clear statutory right of carriage and channel position that applies prospectively notwithstanding the existence of prior agreements between cable operators and cable programming

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274 See paras.105-110, infra.

275 See paras. 154-155 infra.

276 House Committee on Energy and Commerce, H.R. Rep. No. 862 ("Conference Report"), 102d Cong., 2d Sess. (1992), reprinted at 138 Cong. Rec. H8308 (Sept. 14, 1992) at 75.

277 See Sections 614(b)(10)(C), 628(h), 325(b)(6).

services.[278] Moreover, despite some cable commenters' requests, we do not believe that the Commission has the jurisdiction to exempt cable operators from contractual liability in cases where the statute supersedes existing agreements. We encourage parties to try to renegotiate such contracts and resolve any conflicts. Furthermore, we believe that the courts are the appropriate forum for handling any contractual disputes.

90. We recognize that the actual extent of conflicting claims among broadcast stations for any particular channel position is unknown at this time. We also note that the 1992 Act provides three channel positioning options for each commercial station and two for each NCE station, and also provides an opportunity for parties to develop their own solutions to conflicting claims. The record before us reveals that there is no uniform preference for channel position among broadcasters. Therefore, we decline to adopt a formal priority structure for resolving conflicting channel position claims at this time. Nonetheless, we do suggest that cable operators and affected broadcast stations give serious consideration to the value of maintaining current channel positions because this approach will be least disruptive, especially for subscribers. We believe that this approach will encourage parties to resolve disputes among themselves and minimize the number of disputes the Commission may have to handle.

91. Congress emphasized that the must-carry and channel positioning provisions are meant to protect our system of television allocations and promote competition in local markets.[279] Therefore, we believe that cable operators must comply with the channel positioning requirements absent a compelling technical reason for not being able to accommodate such requests. We do not believe that inconvenience, marketing problems, the need to reconfigure the basic tier or the need to employ additional traps or make technical changes are sufficient reasons for denying the channel positioning

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[278] Contrary to some cable programmers' assertions, our must-carry rules will not be applied retroactively. The rules do not provide for penalties to a cable operator or require reimbursement to broadcasters for a cable operator's past carriage or channel positioning practices under prior or existing contracts. See Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988); id. at 219 (Scalia, J., concurring) ("A rule with exclusively future effect . . . can unquestionably affect past transactions . . ., but it does not for that reason [become a retroactive rule].") (emphasis in original). Nor do we believe that the effect of the 1992 Act's must-carry requirements on existing programming contracts raises constitutional problems. See Multistate Communications, Inc. v. FCC, 728 F.2d 1519, 1526 (1984) ("Federal regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution. So long as the Constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with previously acquired rights does not condemn it."), quoting FHA V. The Darlington, Inc., 358 U.S. 84, 91 (1953), and Fleming v. Rhodes, 331 U.S. 100, 107 (1947).

[279] Conference Report at 75.

request of a must-carry signal. Only where placement of a signal on a chosen channel results in interference or degraded signal quality to the must-carry station or an adjacent channel, or causes a substantial technical or signal security problem, will we permit cable operators to carry a broadcast signal on a channel not chosen by the station.[280] We believe that most systems are able to configure their service to fulfill this requirement. A cable system claiming that it cannot meet a channel positioning request for technical reasons will have to provide evidence that clearly demonstrates that the operator cannot meet this requirement.

3. Signal Quality

92. The Notice solicited comments on whether the Commission's recently adopted Cable Technical Report and Order[281] satisfies the requirements for signal quality standards specified in the 1992 Act. Section 614(b)(4)(A) specifically directs the Commission to adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.[282] Under these requirements, the signals of local commercial television stations shall be carried without material degradation. In addition, Section 615(g)(2) requires cable operators to provide qualified local NCE television stations with bandwidth and technical capacity equivalent to that provided to commercial television stations carried on the cable system, and to carry the signals of such stations without material degradation.

93. Section 614(h)(1)(B)(iii) provides that a cable operator is not required to carry a local commercial television station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, if the station does not agree to bear the costs of delivering a good quality signal or a baseband video signal. Similar, but slightly different, requirements are contained in Section 614(h)(2)(D) for qualified low power stations. Likewise, Section 615(g)(4) provides that a cable operator shall not be required to carry the signal of any qualified local NCE television station that does not deliver to the cable system's principal

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280 Should such a situation arise, we expect the cable operator and the broadcaster to negotiate in good faith and attempt to resolve the problem without Commission intervention. We thus anticipate that we will rarely be called upon to resolve such disputes.

281 See Report and Order in MM Docket Nos. 91-169 and 85-38, 7 FCC Rcd 2021 (1992), (Cable Technical Report and Order) and Memorandum Opinion and Order in MM Docket Nos. 91-169 and 85-38, 7 FCC Rcd 8676 (1992) (Cable Technical Reconsideration).

282 We believe it is clear from the overall context that the comparability of treatment specified is intended to be between "NTSC" broadcast and cable origination channels.

headend a good quality signal or baseband video signal.

94. Cable interests generally agree with the Commission's assessment that the comprehensive standards adopted in the Cable Technical Report and Order satisfy the signal quality requirements of the 1992 Act.[283] Several cable commenters state that cable operators should not have any obligation to enhance television signals received over-the-air other than to employ good engineering practices and have the proper equipment.[284] However, MSTV submits that the rules should include a requirement that, if a cable system takes any steps to improve the quality of any of its nonbroadcast signals, it must do the same for broadcast signals.[285] Nielsen urges the Commission to require carriage of the entire broadcast signal, including program identification or SID codes appearing in either the "primary video" or the VBI, without degradation, when implementing standards to ensure that requirements in Sections 614(b)(4)(A) and 615(g)(2) are met.[286] Furthermore, Hammett & Edison (H&E) favors additional standards that would consider material degradation to exist if the picture quality of a cable signal viewed at any downstream test point or subscriber tap, as compared with the picture quality of that same channel as received at the headend, is degraded by two or more TASO units.[287]

95. With respect to the need for additional rules to implement Section 614(h)(1)(b)(iii), cable operators state that the rules should make clear that a station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend include improved antennas, increased tower height, microwave relay equipment, amplification equipment and any tests that may be needed to determine whether the station's signal complies with the signal strength requirements.[288] CBA suggests that the

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283 Acton Comments at 19; TCI at 19; Small Operators Comments at 4; NCTA Comments at 23, Continental Comments at 25.

284 NCTA Comments at 23; Continental Comments at 22-23; Adelphia Comments at 18; Time Warner Comments at 27.

285 MSTV at 3.

286 Nielsen at 9.

287 H&E Comments at 3-6. TASO is an acronym for the Television Allocations Study Organization. This advisory group created picture impairment standards that assign numerical grades (units) to the subjective picture quality of television signals.

288 TCI Comments at 20; Time Warner Comments at 29; Adelphia Comments at 20; Armstrong Comments at 20. In addition, Time Warner and Adelphia contend that stations that are currently carried and which assert must-carry rights under the Act need not be carried unless a good quality signal is received at the cable system's principal headend. Adelphia Comments at 20; Time Warner Comments at 29. Moreover, Armstrong and others argue that a television station's use of extraordinary means, such as microwave, to deliver a signal to the headend cannot be considered as a method to establish the must-carry status

provisions of Section 614(h)(B)(iii) applicable to full power television stations should also be adopted for LPTV stations;[289] similarly, Time Warner and Adelphia recommend that the commercial station standard should be adopted across-the-board. Continental states that there are some technical deficiencies in the statutory language of Section 614(h)(1)(B) and requests several clarifications and a definition of the term "signal processing equipment."[290]

96. With respect to broadcasters' payment for delivery of good quality signals, NAB states that whether a signal meets the required level depends on a number of factors unique to each cable installation. Thus, NAB contends that "good engineering practices" should be a guide to whether the cable operator has undertaken reasonable efforts to receive the broadcast signal.[291] NAB suggests that cable operators be required to notify any eligible broadcaster that does not deliver a good quality signal to the principal headend within 30 days after the effective date of the new rules. NAB states that such notification should include engineering specifications and signal measurements.[292] Under this proposal, a broadcaster would have 30 days to respond to the cable operator and would be expected to indicate whether it agrees with the signal measurements and whether it intends to pursue its must carry rights. NAB further states that a cable operator should be required to expend reasonable efforts to cooperate with the broadcaster before the remedy provisions of Section 614(d) are applied.[293] NCTA argues that the recently adopted technical rules are sufficient to ensure that operators employ good engineering practices and no further onus should be placed on the cable operator regarding signal delivery. NCTA further states that the burden should be on the broadcaster to show that the requisite standard is met.[294]

97. As we observed in the Notice, the Cable Technical Report and Order requires cable operators to make reasonable efforts and use good engineering practices and proper equipment to guard against unnecessary degradation of broadcast television signals. The Cable Technical Report and Order further encourages cable operators to work with broadcasters to resolve problems affecting the quality of a particular signal prior to its reception at the cable headend. At the same time, the Order provides that cable operators are not required to take extraordinary measures to improve upon the quality of signals over which they have no control.

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of a signal. Armstrong Comments at 20; InterMedia Comments at 20.

289 CBA Comments at 6.

290 Continental Comments at 21-22.

291 NAB Comments at 6-7.

292 NAB Comments at 29-30.

293 NAB Comments at 30.

294 NCTA Comments at 12.

98. Given that our current technical standards adopted in the Cable Technical Report and Order require a cable operator to provide to the subscriber a good quality signal for all classes of cable channels, including broadcast channels, without material degradation,[295] we are not convinced that additional requirements for broadcast television stations are needed at this time, as some commenters suggest.[296] We continue to believe that our technical standards,[297] considered as a whole, ensure that cable systems will deliver a good quality picture to subscribers. In fact, additional regulations in this area may have the unwarranted effect of impeding technological advances and experimentation by the cable industry (e.g., signal compression and 500-channel technology).

99. On the issue of signal levels at a cable system's principal headend, Time Warner and others comment that the standard set forth in the 1992 Act is solely a signal strength measurement (e.g. -49dBm for VHF and -45dBm for UHF commercial television stations), and that the 1992 Act also calls for a "good quality signal" to be delivered as well. Time Warner maintains that a signal can meet the 1992 Act's signal strength standard and yet be unwatchable.[298] It thus suggests that the signal quality standard be specified as a signal strength measurement and that we also adopt a benchmark to measure a good quality signal. In particular, Time Warner supports a measurable technical parameter that approximates a TASO Grade 2 picture (i.e., a television picture with a visual signal level to undesired noise ratio of at least 43 dB) receivable at the system's principal headend.

100. We believe that the signal level measurement standard contained in the 1992 Act will generally result in a good quality television signal being received at the cable system's headend; thus, we will not adopt additional

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295 The signal quality at the subscriber endpoint would be affected by any intermediary point of signal reception and processing, including the receiving antennas at the headend and any cable system processing points in-between. "Material degradation" in these circumstances refers to degradation beyond the normal operations and processing and transmission of signals on the cable system.

296 See, e.g., H&E Comments at 3-6. Nielsen urges the Commission to require the carriage of the entire broadcast signal, including program identification or SID codes appearing in either the "primary video" or VBI, without degradation. Nielsen Comments at 9. As discussed earlier, we decline to require the carriage of program identification codes. However, if the cable operator elects to carry such program identification codes, we expect that they be carried without material degradation.

297 Those standards are set forth in Section 76.605 of our rules.

298 For example, a signal may be rendered unwatchable by ghosting, excessive noise, electrical interference or for reasons wholly beyond the control of the cable operator.

standards as Time Warner and others request.[299] However, as Time Warner notes in its comments, there may be situations where the levels of undesired signals (noise), outside of the cable operator's control, that are received at the cable system's headend adversely affect the quality of a television station's signal. We believe that, where a broadcaster's signal strength at the cable headend meets the above standard but, for reasons beyond the control of the cable operator, a good quality picture is not receivable, the broadcast station and the cable operator should initially attempt to resolve the problem. In the event that the dispute cannot be resolved, the parties may seek appropriate remedies from the Commission. The Commission, as a matter of course, will consider all relevant technical issues, including the signal-to-noise ratio as suggested by Time Warner.

101. If good engineering practices and proper processing equipment produce a signal that does not meet our technical standards at the subscriber terminals, we will require the cable operator to resolve the problem or identify the reason why it cannot provide the required level of signal quality. In so doing, the cable operator should be able to identify the problem. If the problem stems from an unsatisfactory quality local television signal received at the cable system's principal headend, the cable operator is not required to bear the burden of improving the signal; however, we expect it to cooperate with the television station to resolve the problem. Of course, if signal degradation occurs between the cable system's principal headend and the subscriber's terminal, it is the sole responsibility of the cable operator to ensure that it is operating in full compliance with the Commission's technical standards.

102. We agree with NAB's suggestion that cable operators should be required to notify any eligible broadcaster that does not deliver a signal meeting the signal strength measurements to the principal headend. Cable operators will have until May 3, 1993, to notify eligible broadcasters in writing that their station does not place an adequate signal level over a principal headend. Additionally, we will not specify the time in which the broadcaster must respond to the cable operator's notification as suggested by NAB, because it will be in the best interests of the broadcaster to respond as soon as possible for carriage on the cable system.

103. The cable operator's notification that a broadcast station is failing to deliver a good quality signal to the system's principal headend should provide the broadcaster with a list of the equipment used to make the initial measurements.[300] Additionally, the cable operator must include a

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[299] To determine whether an adequate signal level is delivered to a system's principal headend, the Act mandates that measurements be taken at the input terminals of a system's signal processing equipment. In this regard we believe that such measurements should be taken at the input to the first piece of active processing equipment relevant to the signal at issue.

[300] As noted above, the cable system should make its signal level measurements at the input to the first active component of the signal processing equipment relevant to the signal at issue. See note 299, supra.

detailed description of the reception and over-the-air signal processing equipment used, including sketches and a description of the methodology used by the cable operator for processing the signal at issue. This information must include the specific make and model numbers and age of all equipment. Moreover, cable operators are expected to cooperate fully with local broadcasters in supplying relevant data. With the above information, we believe that a majority of disputes regarding the adequacy of signal levels delivered to principal headends will be informally resolved. Furthermore, the above information will assist broadcasters in determining whether they wish to pay for appropriate signal improvements. Should the parties be unable to resolve their dispute informally based upon the above, a station denied carriage because the cable operator claims the station fails to deliver a good quality signal may file a complaint with the Commission.

104. Further, we generally agree with cable interests that it is the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend. This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements, especially if the cable system's over-the-air reception equipment is already in place and is otherwise operating properly.[301] We believe that a cable operator should not be required to incur such equipment improvement expenses when it is mandated to retransmit a particular television signal on its cable system. However, we disagree with Armstrong and other commenters who assert that a television station's use of microwave or other means (such as a translator) to deliver a signal to the headend cannot be considered a method to provide a good quality signal to the headend. We view such methods to be no different than a television station providing improved equipment to ensure that a cable system operator receives a good quality signal for retransmission to its subscribers.[302] We also reject the suggestion made by CBA to extend the provisions of Section 614(h)(B)(iii), which apply on their face to full power television stations, to LPTV stations. Such an interpretation is clearly not intended by Congress in the 1992 Act.[303]

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301 For cable systems that are being built and/or are in the design stage, we expect the cable operator to consult with local television stations concerning the necessary equipment needed to receive a good quality signal and to negotiate the additional costs of upgrading of equipment with the broadcaster, if necessary.

302 Of course, a broadcast station that is not local for must-carry purposes cannot make itself local by employing a direct cable connection, microwave link or translator.

303 In addition, Continental suggests that the Commission should define the term "signal processing equipment" because the equipment traditionally used to receive over-the-air broadcast stations do not actually process signals. We decline to do so at this time because processing equipment used in the context of the 1992 Act is a broad term encompassing the many different methods of delivering signals to the cable headend. For example, the input to signal

D. Procedural Requirements

1. Notification Regarding Deletion or Repositioning of Channels

105. The 1992 Act requires a cable operator to provide written notice to a local television station, and subscribers in the case of NCE stations, at least 30 days prior to either deleting from carriage or repositioning that station on the system.[304] In addition, a cable operator may not delete or reposition a local commercial station during a ratings period. In the Notice, we sought comment on the implementation of these provisions, including whether we can or should require cable operators to notify subscribers of the deletion or repositioning of a commercial must-carry signal as is required by the Act for NCE stations.

106. Many commenters state that subscribers should be notified when commercial must-carry signals are deleted or repositioned.[305] AFLAC contends that, by adding a notification requirement in such cases, the Commission can ensure that viewers have sufficient information to express their concerns regarding changes in signal carriage.[306] INTV contends that subscribers may be confused by the required notification for some signals, i.e., NCE stations, but not others.[307] Alternatively, several cable interests oppose this added requirement, arguing that it will increase operator costs and that many operators will notify their subscribers of upcoming changes voluntarily.[308] A number of commenters propose that such notices should also be served on franchising authorities,[309] local exchange carriers that are providing video dialtone or otherwise leasing channels to cable operators or alternative video distributors,[310] and ratings organizations.[311] Discovery asserts that cable

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processing equipment could be at the headend's television antenna on the tower, or at the receiving end of a microwave link from the television station's studio, or at the end of a hardwire cable connection from the television station's studio.

304 Sections 614(b)(9) and 615(g)(3). We note that Section 615(g)(3) uses the term "repositioning" for both channel reassignment and deletion from a cable system.

305 See, e.g., Acton Comments at 24; Palm Desert Comments at 8; INTV Comments at 16; CFA/MAP Comments at 14-15.

306 AFLAC Comments at 10.

307 INTV Comments at 16.

308 Adelphia Comments at 20; Time Warner Comments at 29; TKR Comments at 11; NCTA Comments at 24.

309 NATOA Comments at 10; AFLAC Comments at 10.

310 GTE Service Corporation (GTE) Comments at 2-4.

programmers should be entitled to the same notification as broadcasters when their channels are being deleted or repositioned.[312]

107. While the 1992 Act provides that the time between notification of deletion or repositioning and any such action should be 30 days, a few parties state that a 60-day requirement will promote an increased dialogue between cable operators and broadcasters and allow more time to resolve conflicts.[313] Fairfax County contends that subscribers should have 60 days notification so that they will have a chance to change their service before the next billing cycle.[314] Moreover, APTS states that the notices to stations should be sent by certified mail with a copy to the Commission, should indicate the reasons for the deletion or repositioning, and should be received by the station at least 30 days prior to any deletion or repositioning by the cable system.[315] In addition, while some commenters, such as CBA, state that including the subscriber notification in routine billing statements should be sufficient,[316] APTS argues that a separate mailing is needed to maximize notice to subscribers.[317]

108. In the Notice, we asked whether it is reasonable to prohibit deletion or channel repositioning solely during the four national four-week ratings periods -- roughly February, May, July and November -- commonly known as audience "sweeps." Commenters generally support this proposal and note that to extend the definition to whenever ratings are conducted would make deletions and repositionings virtually impossible.[318] Nielsen requests that we also impose this limit on NCE stations.[319]

109. The provisions regarding notification for changes in carriage of must-carry signals are specified in the 1992 Act.[320] Generally, we do not find

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511 This requirement, in Nielsen's view, would be consistent with the 1992 Act's goal of protecting the integrity of ratings and the prohibition against deletions during ratings periods. Nielsen Comments at 10-11.

312 Discovery Comments at 7.

313 Nationwide Comments at 9.

314 Fairfax County Reply at 9.

315 APTS Comments at 36-37.

316 CBA Comments at 10.

317 APTS Comments at 36-37.

318 Acton Comments at 24; TCI Comments at 24; NCTA Comments at 24.

319 Nielsen Comments at 12.

320 We will make them effective upon publication of the summary of this Report and Order in the Federal Register.

sufficient justification to expand these requirements. However, as we proposed in the Notice, the rules will prohibit deleting or repositioning of must-carry signals during any of the four annual sweep periods. We believe that this approach is consistent with congressional intent and the common usage of the term "ratings period."[321] Thus, we will prohibit the deletion and repositioning of must-carry signals during these four time periods. We will not, however, extend these provisions of the statute to NCE stations. We believe Congress likely omitted such a requirement from the NCE carriage section in recognition of the fact that ratings sweep periods are largely a commercial phenomenon and do not directly affect NCE stations.

110. However, we believe that it is appropriate to require cable operators to notify both the stations and subscribers about changes in the carriage of both commercial and noncommercial stations.[322] We note that several cable commenters have indicated that this additional requirement will present only a minimal additional burden and can be accomplished by including the necessary information in the monthly billing mailing in the month prior to effectuating any change. We believe that low power stations should be treated like any other local signal.[323] Moreover, we believe that, consistent with the

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321 See Senate Report at 86.

322 We will require cable operators to notify subscribers at least 30 days prior to any deletion of a channel or any repositioning as the statute requires for notification of affected stations. This requirement is consistent with the customer service standards we adopt today in MM Docket No. 92-263, pursuant to which a cable operator must give its subscribers 30 days notice of any changes to its channel line-up. See Report and Order in MM Docket No. 92-263, adopted March 11, 1993. However, where a franchise agreement requires additional time between notice and such actions, the provisions of the franchise agreement will take precedence over our rules.

Under the implementation schedule we adopt today for must-carry, cable operators must notify broadcast stations by May 3, 1993, if they do not place a signal meeting the signal strength measurements over the system's principal headend, or if carriage of the station would result in increased copyright liability. Cable operators must then be carrying their full complement of commercial must-carry stations 30 days later. We recognize that this timetable may not allow sufficient time for a cable operator to resolve disputes with broadcasters with these specific problems and still provide its subscribers 30 days notice that it will be adding such stations by the date it must be carrying its commercial must-carry complement. Accordingly, in these limited situations, we will not require cable operators to give subscribers the full 30 days' notice. Rather, the operator must give subscribers as much notice as is practical under the circumstances.

323 We stress that under Sections 614(b)(9) and 615(g)(3) of the 1992 Act, notice to subscribers and affected stations must be given for the deletion or repositioning of any "local commercial television station" and any "qualified local noncommercial educational television station." Accordingly, the notification requirements are not limited to must-carry signals alone.

requirements of the customer service provisions of the 1992 Act to notify subscribers of any change in broadcast signal carriage, the licensee of any broadcast television station carried on a cable system, including non-must-carry stations, should be notified of a change in carriage or repositioning of its signal. We find this requirement especially appropriate as broadcasters may not even be aware that specific cable systems carry their signals at this time since retransmission consent has not previously been required.

2. Compensation for Carriage

111. Under the 1992 Act, a cable operator is generally prohibited from accepting or requesting compensation for carriage or channel positioning of a television station, NCE or commercial, carried in fulfillment of the must-carry requirements.[324] However, a station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.[325] Moreover, the cable operator may accept payments as indemnification for any increased copyright liability resulting from carriage of commercial must-carry stations that would be considered distant signals for copyright purposes.[326] Similarly, a cable operator shall not be required to carry a qualified local NCE station not already being carried that would be considered a distant signal for copyright purposes, absent indemnification for any increased copyright costs. In addition, any existing agreement between a local commercial station entitled to must-carry status and a cable operator for carriage or channel position entered into prior to June 26, 1990, may continue through the expiration of such an agreement.[327]

112. Several commenters assert that the Commission should make it clear that must-carry eligibility is contingent upon the broadcaster paying any and

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[324] Sections 614(b)(10) and 615(i).

[325] We discussed the responsibility of a broadcast station to bear the cost of delivery of a good quality signal above in our discussion of signal quality issues. See paras. 92-104, supra.

[326] See Copyright Act, 17 U.S.C. Section 111.

[327] Time Warner and Adelphia ask us to clarify that signal carriage agreements entered into after July 1, 1990, but before the effective date of the 1992 Act, are not automatically superseded and need not be renegotiated. Time Warner Comments 29; Adelphia Comments at 20. We do not agree with this interpretation of the grandfathering provision for existing agreements. See para. 89, supra. Rather, we believe that only those agreements between cable operators and broadcasters regarding carriage or channel position that were entered into before June 26, 1990, may continue for stations electing must-carry status.

all copyright fees.[328] NAB and others suggest that the rules we adopt should accurately reflect the cable royalty structure.[329] For example, United Video asserts that the rules should state that the date the station is added to the cable system determines the copyright royalty rate for that station.[330] MPAA recommends that the Commission's rules take into account the copyright royalty accounting periods when setting dates for must-carry election since a station would need to pay for an entire six-month period even if carried for only part of that period.[331] Moreover, NAB asserts that any disputes regarding these matters should be resolved in the courts.[332]

113. A number of cable interests explain that copyright liability is determined by the number and type of distant signals carried and request the right to designate which signal is responsible for which incremental cost. They claim that otherwise each broadcaster will claim to be responsible for the lowest amount.[333] In addition, cable operators seek the authority to secure copyright indemnification in advance and impose reasonable measures on broadcasters, such as placing funds in escrow.[334] Acton and TCI argue that broadcasters must not be allowed to restrict their carriage requests to particular communities in a system to avoid or limit their copyright liability since operators are under no obligation to trap any signal within a single system.[335] NCTA asks us to clarify that a partially local signal must pay the

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[328] United Video Comments at 9; TCI Comments at 11-12; Acton Comments at 11-12. NBA/NHL seeks a clarification that the payment of a cable system's incremental copyright fees by a distant signal that is not located in the same area as the cable system cannot cause that distant signal to be considered local for must-carry purposes. For example, NBA/NHL states that, even if WTBS, Atlanta, Georgia, were willing to pay the copyright fees incurred by a New York cable system, WTBS cannot be considered local for that system for must-carry purposes. NBA/NHL Comments at 4. We agree with this analysis. A signal must first qualify as a local signal for must-carry purposes and then, if copyright liability would be incurred by its carriage, the station would have the opportunity to indemnify the system in return for must-carry rights.

[329] NAB Comments at 31. NAB further observes that the determinations of whether a signal is local or distant for copyright liability is based on the pre-Quincy must-carry rules which are not readily available. Therefore, NAB suggests that they be included in the new must-carry rules. NAB Comments at 6.

[330] United Video Comments at 9.

[331] MPAA Comments at 8-9.

[332] NAB Comments at 33.

[333] TCI Comments at 12-13; Acton Comments at 12-13; Armstrong Comments at 20-21; InterMedia Comments at 20-21; Tel-Com Comments at 22-23.

[334] Acton Comments at 13; TCI Comments at 13; NCTA Comments at 11.

[335] Acton Comments at 12; TCI Comments at 12.

copyright costs associated with adding carriage of that particular station to the system's line-up.[336] NAB states that, since the actual amount of additional royalties to be paid cannot be determined until gross receipts are known at the end of the six-month period, cable operators should be required to send the distant station a bill for that portion of the royalties that represents carriage of the last-added station.[337]

114. With respect to copyright indemnification, we expect cable operators and broadcasters to cooperate with each other to ensure that operators are compensated for the cost of carriage of "distant" must-carry signals and that broadcast licensees pay only their fair share. We note that the 1992 Act in Section 614(b)(10)(B) refers to the "increased copyright liability resulting from carriage of such signal." In addition, the legislative history indicates the payment from a television station represents the "incremental copyright charges incurred by the cable system from carriage of such a station."[338] Thus, a broadcaster may only be responsible for the increased copyright costs specifically associated with carriage of its station as a must-carry signal. For example, if a station requesting must-carry status is the third distant signal carried by the system, it may have to indemnify the cable system for the difference in copyright liability between carriage of two and three distant signals. We believe that stations should be counted in the order they satisfy all the necessary conditions for attaining must-carry status. We further believe that it is reasonable for a cable operator to receive a written commitment from a broadcaster that ensures that the payments will be made once the actual amount of copyright liability is determined. In return, we find it fair to require a cable operator to provide the broadcaster with an estimate of the expected copyright liability based on previous payments and financial information.

3. Remedies

115. Procedures. Section 614(d)(1) and Section 615(j) of the 1992 Act provide for the resolution of carriage and channel positioning disputes between a broadcast station and a cable operator. With respect to commercial stations, the Act requires a local commercial station to notify the cable operator of an alleged violation, and further requires the cable operator to respond, prior to that station filing a complaint with the Commission. With respect to NCE stations, the Act permits an NCE station to file a complaint with the Commission prior to notifying the cable operator. In either situation, once a complaint is filed, the Commission has 120 days to either dismiss the complaint or take remedial action. The Notice sought comment on the implementation of these remedial provisions, including the difference in

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336 NCTA Comments at 11.

337 NAB Comments at 31-34. In addition, NAB recommends that cable system operators provide copies of their Statements of Account for the three preceding accounting periods to stations subject to Section 614, so the stations can estimate the amount of copyright liability that they must indemnify.

338 Conference Report at 71.

treatment of local commercial stations and NCE stations, and the necessary procedural rules relating to the filing of either type of station complaints.

116. We first discuss the procedural requirements that will govern all aspects of the remedial provisions of Sections 614(d)(1) and Section 615(j). In considering the procedural needs of such a remedial provision, the Notice sought comment on whether the special relief procedures of Section 76.7 should be used, with modified time periods, or whether the standard notice and comment procedures should be relied upon. The Notice also asked whether the fee requirements of Section 76.7 should be waived since Mass Media complaints are not subject to filing fees under the Communications Act.[339]

117. Some cable commenters state that use of the procedures established by Section 76.7 would be appropriate, while some broadcast interests assert that special relief procedures should be applied with flexibility.[340] Commenters opposing the use of Section 76.7 did not make any recommendation as to what procedural rules should be applied.[341] Broadcast parties generally state that no fees should be required, as stations which are deprived of their statutory carriage rights should not be burdened with a fee as a pre-condition for relief.[342] Other commenters assert that any fees should be paid by the losing party, or if the Commission finds itself overburdened with frivolous complaints, then a fee may be appropriate if refundable for valid complaints.[343] We are also reminded that noncommercial stations are generally exempt from fee provisions by Section 1.1112 of the Commission's rules.[344]

118. We believe that the special relief procedures of Section 76.7 provide a good framework for expediting complaints filed pursuant to Sections 614(d)(1) and 615(j). Notice and comment rule making proceedings are inappropriate, as the remedial provisions for must-carry disputes do not require any amendment of rules. Because of the 120-day time limit for a ruling on the must-carry obligations of the parties, time is of the essence. Therefore, in order to conform the current provisions of 76.7 to time frames we believe are necessitated by the 1992 Act with respect to both must-carry complaints and other requests for special relief, we are amending Section 76.7

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339 Notice at 8064.

340 Adelphia comments at 21; Time Warner Comments at 30; CBA comments at 12; APTS Comments at 38.

341 NAB Comments at 35.

342 NAB Comments at 36; CBA Comments at 12.

343 Adelphia Comments at 22; Time Warner Comments at 31; INTV Comments at 18.

344 APTS Comments at 39.

in this proceeding.[345] Although the procedures set forth in Section 76.7 will apply, rather than filing petitions for special relief, we believe it is more appropriate for parties to file complaints, as the statute explicitly refers to the filing of complaints, not petitions for special relief. We have therefore amended Section 76.7 to accommodate the filing of complaints pursuant to Sections 614 and 615 of the Act. In this regard, parties filing such complaints will not be subject to the fee provisions of our rules or of the Communications Act normally applicable to special relief petitions.

119. Initial Notice. Section 614(d)(1) provides that whenever a local commercial television station believes that a cable operator has failed to meet its must-carry obligations, the station must notify the operator, in writing, of the alleged failure. The broadcast station is required to identify its reasons for believing that the cable operator is obligated to carry the signal or has otherwise failed to comply with channel positioning or repositioning or other requirements.[346] Although the station's notice to the cable operator is required by the Act, it is a preliminary requirement and is therefore not immediately governed by Section 76.7. However, we recommend that a commercial station's initial notification to the cable operator of an alleged failure to comply with must-carry or channel positioning be made with the same level of specificity, raising all issues, as the station would raise before the Commission if the request should be denied. This initial notification will act as a condition precedent to a commercial or LPTV station filing a complaint with the Commission, and will serve as a primary part of the pleadings in the event a complaint is filed.

120. Cable Response. Section 614(d)(1) requires that the cable operator respond to a written request from a commercial or LPTV station within 30 days of its receipt. Commenters did not make specific recommendations with respect to such response. We believe the response provided by the cable operator to a commercial or LPTV station should contain the same level of specificity, as well as all affirmative defenses, as the cable operator would raise before the

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345 In our Report and Order in MM Docket No. 82-434, 7 FCC Rcd 6156 (1992), recon. denied 8 FCC Rcd 1184 (1993), we revised the cable cross-ownership rules to permit ownership of cable systems by national television networks in certain circumstances. In that proceeding, the special relief rules were amended to provide revised filing deadlines for petitions concerning the discontinuance of carriage or repositioning of broadcast stations by cable systems owned by networks and added a requirement that a television station must be notified at least 30 days before its signal is deleted or repositioned by such cable operator. Pursuant to the 1992 Cable Act, the relevant provisions herein will supersede modifications made in that proceeding. Thus, as set forth in Appendix C, we will amend Section 76.7 and eliminate Section 76.63.

346 Notice at 8064 n. 48. In the Notice, we stated that we believed it appropriate to afford qualified LPTV stations the same rights as a local commercial station. Commenters did not address this issue; accordingly, all references to commercial television stations herein will include qualified LPTV stations.

Commission in defense of a complaint against it.[347] This initial response will serve as a primary part of the pleadings in the event a complaint is filed by an aggrieved commercial or LPTV station.

121. Commercial or LPTV Complaint. Section 614(d)(1) states that "[a] station that is denied carriage or channel positioning or repositioning by a cable operator, or that does not receive a timely response from the cable operator, may file a complaint with the Commission describing how the cable operator has failed to meet its obligations and the basis for the station's allegations." All such complaints shall adhere to the requirements of Section 76.7 of our rules. As discussed above, the complaint shall include a copy of the initial request sent by the commercial station to the cable operator and the response received from the operator, if any. If no response was received from the cable operator, the complaint should state this as well.

122. NCE Station Complaint. With respect to an NCE station, although the statute gives the NCE station the right to directly file a complaint with the Commission, it is anticipated, though not required, that if there is any question relating to the carriage obligations of the cable system, the NCE station will make inquiries of the cable system prior to filing a complaint.[348] In the event the NCE station chooses to notify a cable operator of an alleged failure to comply with the Act, we believe it appropriate that they use the procedures outlined for commercial or LPTV stations.[349] If it so chooses, the NCE station should also notify the cable operator that it is availing itself of those procedures and that it anticipates receiving a response from the cable operator within 30 days. In the event the NCE station chooses to avail itself of the plain language of the statute and file a complaint directly with the Commission without prior notification to the cable system, the NCE station must serve the cable system as provided in Section 76.7 of our rules.

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[347] See 47 C.F.R. § 76.7(d).

[348] In its comments, APTS states that in order for a NCE station to be fully apprised of its rights, the cable operator should be required to provide all stations potentially entitled to must-carry a notification that contains all necessary information for the determination of must-carry rights. APTS Comments at 25. Consistent with paragraphs 10 and 25, supra, we are requiring the cable operator to send a notice to qualified NCE stations with respect to the location of the cable system's principal headend and we are requiring each system to maintain a list of the signals carried pursuant to must-carry requirements in its public file. Any additional information required by a broadcaster must be requested on an individual basis.

[349] APTS suggests that the NCE station may notify the cable operator that it demands a response within 20 days. The Act does not require the NCE station to notify the cable operator prior to filing a complaint, nor does it require the cable operator to respond to such a notification. However, we believe that a notification with a request for response within a reasonable period of time (20-30 days) should be given due consideration by the cable operator.

123. Time Limits. The Notice proposed a 30- or 60-day time limit from an affirmative action by a cable operator (e.g., discontinuing carriage, repositioning, refusing carriage upon request)[350] in which to allow stations to file complaints. The Notice also proposed that a station be permitted to file a complaint at any time immediately following such an action by a cable operator, without having to wait for the time period to elapse.[351] Broadcast comments indicate that no time limit should be established; because the station is the party who suffers by any delay, it will have an incentive to file as soon as it is aware that its rights may be or have been violated.[352] There was concern, however, that a station may not be aware of certain rights and therefore not aware of some specific action that would trigger the start of the time period for filing a complaint.[353] Cable interests state that there should be a time limit for stations to file complaints, and most suggest a 30-day limit after the triggering event occurs.[354] Cable commenters also contend that since Section 614(b)(9) requires that a cable operator provide 30-day written notice to a station prior to deleting or repositioning such station, that notification by the operator of such a proposed change should be the trigger for a station to file a complaint and that the station should be required to file the complaint within 30 days of the receipt of such notice from the operator. Time Warner states that complaints should be filed within 120 days of notice from a cable operator, either of its intent to make a change or its refusal to grant a written request of the station.[355]

124. We believe that a time limit for the filing of a must-carry or channel positioning complaint is appropriate. A broadcast station (commercial, LPTV or NCE) has no interest in resting upon its rights to carriage or channel position under the terms of the 1992 Act. Concurrently, a cable system has no interest in having its obligations to stations for their carriage or channel positions remain uncertain. Most importantly, subscribers have an interest in certainty of service and minimal disruption. Therefore, we believe it appropriate that a station be required to file its complaint within sixty (60) days of an "affirmative action" by a cable operator which directly affects the rights and interests of the station. The requirement for an affirmative action

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350 Such a triggering action would also include a unsatisfactory response or no response from a cable operator after a notice from the station of an alleged violation or a request for channel position or carriage.

351 Notice at 8064.

352 INTV states that only the basic statute of limitations applicable to any alleged violation of the Communications Act should be applied. INTV Comments at 18.

353 APTS Comments at 39, Reply Comments at 23; NAB Comments at 34; INTV Comments at 18.

354 Armstrong Comments at 21; Intermedia Comments at 21; Adelphia Comments at 22; Tel-Com Comments at 23; TKR Comments at 11.

355 Time Warner Comments at 31.

by the cable operator will ensure that a station is aware of its rights or the potential loss of rights when the time period for filing complaints commences. An affirmative action for these purposes would include a denial from a cable operator in response to a demand by the station for either carriage or channel position, or the failure to respond to such a demand within the required 30-day time frame. Section 614 requires that a commercial station notify a cable operator of an alleged failure to comply with the Act, and allows 30 days for the operator to respond; therefore, the time period for filing a complaint would expire 60 days after the date the cable operator's denial of a demand is received by the broadcaster or the date such response is due. This requirement applies even if the cable operator first notifies the station of its intent to reposition the channel or discontinue carriage. Upon receipt of such a notice, the station must then notify the operator that it believes such action will violate the Act. The cable operator is obligated to respond; however, the 60 day period for filing complaints will commence on the day the response is due, whether or not a response is received by the station. The station need not wait the 60 days if a response is received prior to the expiration of such time. With respect to commercial stations, no complaints will be accepted if filed more than 60 days after the date of the response from the cable operator was due. With respect to NCE stations, no complaints will be accepted if filed more than 60 days after the station became aware, through some affirmative action of the cable operator, that such operator had allegedly violated the Act.[356]

125. Opportunity to Respond. The Notice suggested that cable operators be given ten (10) days to reply to or oppose a must-carry complaint filed with the Commission by either a commercial/LPTV station or an NCE station.[357] Both cable interests and broadcasters respond similarly with respect to the opportunity of a cable operator to answer an NCE filed complaint. The overwhelming response was that the cable operator should be given 20 to 30 days to file a reply or opposition to a complaint filed with the Commission by an NCE station, as there would have been no other prior notice of the complaint.[358] With respect to commercial television station complaints, which have been preceded by a notice to the cable operator, both Acton and TCI state that the time specified to reply to or oppose a complaint should be 30 days.[359]

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356 A written request by an NCE station to a cable operator for the list of must-carry stations contained in operator's public file will not be considered notification of a failure to comply with the Act. However, receipt by the NCE station of such a list (which the operator is required to provide within thirty (30) days of a request) may constitute the specific event triggering the 60 day time frame in which to file a complaint, if such list contains the information on which the NCE station will base its complaint.

357 Notice at 8064.

358 Adelphia Comments at 21; Time Warner Comments at 31; Intermedia Comments at 21; Tel-Com Comments at 24. TKR states that cable operators should have 30 days to respond to all complaints. TKR Comments at 11.

359 Acton Comments at 26; TCI Comments at 26.

In reply comments, APTS asserts that it believes that 30 days would be appropriate for filing a reply or opposition.[360] As noted above, the amended provisions of 76.7 will be applied to all complaints. We believe that the twenty (20) day opportunity to reply to or oppose a complaint set forth in that rule will be sufficient time for cable operators to react to either a commercial or NCE station complaint.

126. Remedial Action. Within 120 days after the date a complaint is filed with the Commission, the Commission must make a determination regarding the must-carry obligations of the cable operator. If the Commission determines that the cable operator has complied with the requirements of the 1992 Act, it shall dismiss the complaint (Sections 614(d)(3) and 615(j)(3)). If the Commission agrees with a commercial or LPTV station's complaint, it will order the cable system to either reposition the station or, in a case of refusal for carriage, to begin or resume carrying that station and to continue such carriage for at least 12 months.[361] With respect to remedies for NCE stations, Section 615(j)(3) provides that the Commission shall take such remedial actions as are necessary.

127. Cable commenters state that they will require 90 days to implement a must-carry order issued by the Commission.[362] They claim that they need time to give the proper notification to affected stations pursuant to the Act, and they must have time to notify subscribers and billing agencies.[363] Broadcasters argue that the cable operator should be required to implement a must-carry order or channel positioning order within 45 days, which is the same time period agreed to in the Standstill Order[364] adopted in litigation challenging the constitutionality of the must-carry provisions of the Act.[365]

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360 APTS Reply Comments at 22.

361 Section 614(d)(3). Acton and TCI state that the decision made by the cable operator with respect to carriage or channel positioning should be given substantial deference, as the cable operator is in the best position to determine the appropriateness of each request received. They state that such a decision should be overturned by the Commission only if it is found to be arbitrary and capricious. WNYC, however, points out that there is no basis in law for giving the judgments of cable operators any deference. We agree. Congress gave the Commission the sole authority for determining the rights and obligations of stations and cable operators, once a dispute has arisen. We do not believe that deference should be afforded to any party, as all decisions will be based on the evidence presented.

362 Armstrong Comments at 23; InterMedia Comments at 23; Tel-Com Comments at 25-26.

363 Tel-Com Comments at 25.

364 See Turner Broadcasting Systems, Inc. v. FCC, C.A. Nos. 92-2247, et al. (D. D.C. Dec. 9, 1992) (Standstill Order).

365 APTS Reply Comments at 30.

No commenters made specific recommendations with respect to remedial action to be taken when an NCE station is found to have been denied its rights.

128. We believe that 45 days is an appropriate amount of time for the cable operator to implement any order of the Commission; however, we reserve the right to reduce or extend such period of time where warranted by the circumstances of a particular case. Since a cable operator will have been notified of the potential for a Commission order, it should be prepared to make necessary adjustments by the time an order is released. While the NCE provisions of the statute appear to contemplate that the Commission will fashion remedies and compliance dates on a case-by-case basis, we anticipate that carriage orders relating to NCE station complaints will carry the same 45-day deadline.

III. RETRANSMISSION CONSENT

129. The new Section 325(b) of the Communications Act provides that, as of October 6, 1993, "no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except--(A) with the express authority of the originating station; or (B) pursuant to section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section." The new subsection contains four exceptions to the retransmission consent requirements, and it directs the Commission "to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in paragraph (2)," (i.e., the four exceptions). This section of the Report and Order addresses implementation of retransmission consent.

A. Definitional Issues

130. The Cable Act's retransmission consent provisions apply, with certain exceptions, to cable systems and other multichannel video programming distributors ("multichannel distributors"). A multichannel distributor is "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service (MMDS), a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming." 1992 Cable Act §602(12). All multichannel distributors must, as of October 6, 1993, obtain retransmission consent in order to carry broadcast signals, subject to the exceptions enumerated in Section 325(b) and, for cable operators only, subject to the must-carry provisions. Commenters generally agree that the definition of "multichannel distributor" should be interpreted expansively, since such distributors are "not limited to" the categories specifically enumerated.[366] Commenters raise definitional issues

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366 MPAA Comments at 4-5; Cap Cities Comments at 22-25; Adelphia Comments at 23-26.